

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES HINKLEY,

No. 4:14-CV-05029-EFS

Plaintiff,

**ORDER GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

ROD SHUMATE,

Defendant.

Before the Court, without oral argument, is the Defendant Rod  
ate's Motion for Summary Judgment and Memorandum in Support, ECF  
2. Plaintiff James Hinkley alleges that Mr. Shumate, as the manager  
. Hinkley's prison unit, was deliberately indifferent to his "basic  
of sleep condition," causing wanton and unnecessary pain and  
ries in violation of the Eight Amendment. ECF No. 8 at 10.  
lifically, Mr. Hinkley claims that his bed-mat was too thin, and he  
injured as a result of Mr. Shumate's failure to provide an  
tional, or new, mat. *Id.* at 6-11. Mr. Shumate counters that he is  
tled to summary judgment because he protected by qualified immunity.  
No. 42 at 4. The Court agrees with Mr. Shumate, and finds that  
fied immunity bars Mr. Hinkley's claims for damages. The Court  
ther finds that Mr. Hinkley is not entitled to injunctive relief.

1                   **I. PROCEDURAL HISTORY**

2       In March 2014, Mr. Hinkley originally brought this civil rights  
 3 action as an inmate of Washington State Penitentiary against multiple  
 4 prison officials, including Mr. Shumate. ECF No. 1. In his amended  
 5 complaint, Mr. Hinkley alleged that the prison unit's hygiene customs  
 6 and bedding violated his rights under the Eighth Amendment. ECF No. 8.  
 7 This Court dismissed the action, ECF No. 12, and the Ninth Circuit Court  
 8 of Appeals affirmed dismissal for all but one claim, stating:

9                   Dismissal of Hinkley's inadequate bedding claim was  
 10 proper as to [the other defendants] because Hinkley failed  
 11 to allege facts sufficient to show that these defendants knew  
 12 that the prison's single-mat policy presented an excessive  
 13 risk of harm to Hinkley's health and disregarded that risk.

14                  However, dismissal of Hinkley's inadequate bedding  
 15 claim as to defendant Shumate was premature because Hinkley  
 16 alleged that Shumate failed to respond to his request for an  
 17 additional mat. These allegations, liberally construed, were  
 18 sufficient to warrant ordering Shumate to file an answer.

19       *Hinkley v. Shumate*, 616 F. App'x 269, 270 (9th Cir. 2015); ECF No. 22  
 20 at 2-3 (citations and internal quotations omitted). This Court  
 21 therefore limits its analysis to whether Mr. Shumate's failure to  
 22 provide an additional, or new, bed-mat entitles Mr. Hinkley to relief.

23                   **II. FACTS OF THE CASE<sup>1</sup>**

24       In early 2012, Mr. Hinkley was placed in the Washington State  
 25 Penitentiary's BAR Unit. ECF No. 8 at 6. Mr. Shumate was the BAR Unit  
 26 manager, and responsible for setting standards within Mr. Hinkley's

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1 unit. ECF No. 8 at 5. The standard-issue mat is listed as three-and-  
2 a-half inches thick, ECF No. 43-1 at 3, but Mr. Hinkley alleges that  
3 his mat, which was placed on a concrete bed, was as low as a quarter-  
4 inch in the middle. ECF No. 8 at 6. As discussed below, during his  
5 stay in the BAR Unit, Mr. Hinkley repeatedly received treated for  
6 various medical conditions and injuries, many of which he now claims  
7 were caused by the inadequacies of his bed-mat.

8 In late 2012, Mr. Hinkley suffered from exercise-induced  
9 rhabdomyolysis and leg pain as a result of doing too many squats during  
10 a workout. ECF No. 43-1 at 35. Then, in May 2013, he was treated for  
11 a left shoulder strain which, according to his medical records, occurred  
12 while piling rocks for the fire in the sweat lodge, *id.* at 48, though  
13 Mr. Hinkley now alleges his bed-mat caused the injury. ECF No. 8 at 7.

14 After a year, late in 2013, Mr. Hinkley reportedly submitted a  
15 kite to Mr. Shumate requesting a new mat because of pain, but the kite  
16 went unanswered. *Id.* at 51. Then, in early 2014, Mr. Hinkley submitted  
17 a formal complaint, asking for a different mat because of pain in his  
18 shoulders, knees, and back. *Id.* at 41-42. However, Mr. Hinkley's  
19 complaint was found "nongrievable" because he had not submitted the  
20 complaint within 20 days of the "incident." *Id.* at 41-43. Still, the  
21 Grievance Program Manager informed Mr. Hinkley: "You might bring the  
22 issue up to your tier representative. If it has affected you to the  
23 extent to cause pain, you can kite your medical provider." *Id.* at 43.

24 Near that same time, Mr. Hinkley reported to medical with a bruised  
25 knee, and medical issued him an additional blanket to pad the wall and  
26 "see if it helps to prevent injury from restless leg problems." ECF No.

1 8 at 49-50. Medical also informed Mr. Hinkley that he should submit  
 2 another kite request for a new mat. ECF Nos. 8 at 52; 43-1 at 62. Mr.  
 3 Hinkley reportedly submitted a second medical kite to Mr. Shumate that  
 4 also went unanswered.<sup>2</sup> ECF No. 8 at 52.

5 By mid-2014, shortly after he had filed this action, Mr. Hinkley  
 6 was receiving iron treatment which helped his restless leg syndrome,  
 7 but complained that he was still getting "intermittent" pain while  
 8 working or sleeping in his joints – specifically his knees, shoulders,  
 9 and hips. ECF No. 43-1 at 74, 85. When medical noted "no palpable, no  
 10 visible abnormality," they ordered x-rays and blood tests. ECF No. 43-  
 11 1 at 85. The report for the resulting five views of Mr. Hinkley's  
 12 cervical spine stated:

13 FINDINGS: Spinal alignment is normal. No acute  
 14 cervical spine fractures are seen. Vertebral bodies are  
 15 normal in height. There is no suspicious lytic or scierotic  
 16 osseous lesion. The paraspinal soft tissues are  
 17 unremarkable.

18 There is minimal disk height loss at C5-C6, indicating  
 19 disc degeneration. Oblique vies show no definite bony neural  
 20 foraminal stenosis.

21 ECF No. 43-1 at 87. The report for two views taken of Mr. Hinkley's  
 22 right tibia fibula found: "No right fibial or fibular fracture or  
 23 dislocation. The ankle mortise is aligned. No significant degerative  
 24 or erosive changes of the knee medial and alteral compartment or  
 25 tibiotalar joint. No suspicious osseous lesion." ECF No. 43-1 at 88.  
 26 The blood test results similarly showed his erythrocyte sedimentation  
 rate and rheumatoid factor were "both normal." ECF No. 43-1 at 90.

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<sup>2</sup> Mr. Shumate states that he does not recall ever receiving either of the kites Mr. Hinkley claims to have sent him. ECF No. 27 at 3.

1  
2 After reviewing the test results and x-rays, the treating physician  
3 ordered "no specific medication nor follow up," but indicated he would  
4 consider more x-rays in the future if Mr. Hinkley kept reporting pain.  
5 CF No. 43-1 at 90.

6 In February 2015, Mr. Hinkley was transferred out of the Bar Unit.  
7 ECF No. 43-0 at 2. He is currently housed at the Lincoln/RAP Work  
8 Release Facility. *Id.*

9 **III. ANALYSIS**

10 **A. Summary Judgment Standard**

11 Summary judgment is appropriate if there is "no genuine dispute  
12 as to any material fact and the movant is entitled to judgment as a  
13 matter of law." Fed. R. Civ. P. 56(a). Although a court views the  
14 evidence in the light most favorable to the nonmoving party while making  
15 this determination, the party resisting summary judgment "may not rest  
16 on conclusory allegations, but must set forth specific facts showing  
17 that there is a genuine issue for trial." *Leer v. Murphy*, 844 F.2d 628,  
18 631 (9th Cir. 1988). For the reasons discussed below, the Court finds  
19 Mr. Hinkley failed to establish any genuine dispute as to the material  
20 facts of his case.

21 **B. Eighth Amendment Claim for Deliberate Indifference**

22 [A] prison official cannot be found liable under the Eighth  
23 Amendment for denying an inmate humane conditions of  
24 confinement unless the official knows of and disregards an  
25 excessive risk to inmate health or safety; the official must  
both be aware of facts from which the inference could be  
drawn that a substantial risk of serious harm exists, and he  
must also draw the inference.

1     *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

2                 As a preliminary matter, the Court notes Mr. Shumate's claim would  
 3 obviously fail if viewed as merely challenging the overall comfort of  
 4 his mat. "The Eighth Amendment requires neither that prisons be  
 5 comfortable nor that they provide every amenity that one might find  
 6 desirable." *Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014)  
 7 (internal quotations and citations omitted) cert. denied, 135 S. Ct.  
 8 946 (2015). Further, Mr. Hinkley's claim cannot reasonably be based on  
 9 deprivation of sleep, as he consistently reported sleeping well. See,  
 10 e.g., ECF No. 43-1 at 50, 52, 60; cf. *Harper v. Showers*, 174 F.3d 716,  
 11 720 (5th Cir. 1999) ("[S]leep undoubtedly counts as one of life's basic  
 12 needs. . . ."). Mr. Hinkley's claim is linked, however, to his restless  
 13 leg symptoms and various injuries. The Court therefore analyzes Mr.  
 14 Shumate's liability in the context of Mr. Hinkley's medical needs and  
 15 treatment.

16                 Mr. Hinkley's kite requests – when viewed in his favor – arguably  
 17 imply Mr. Shumate was aware of both Mr. Hinkley's medical issues and  
 18 his requests for an additional mat. The Court need not decide, however,  
 19 whether depriving Mr. Hinkley of an additional mat was "sufficiently  
 20 serious" to qualify as a denial of "the minimal civilized measure of  
 21 life's necessities." *Farmer*, 511 U.S. at 834 (internal citations and  
 22 quotation marks omitted). Instead, the Court need only determine  
 23 whether Mr. Shumate is entitled to qualified immunity.

24 **C. Qualified Immunity**

25                 If a prison official reasonably believes his conduct complies with  
 26 the law, qualified immunity applies; an official must have "fair

1 warning" that an action is unconstitutional before civil liability  
 2 attaches. See *Chappell v. Mandeville*, 706 F.3d 1052, 1056 (9th Cir.  
 3 2013). The official's immunity hinges on the objective legal  
 4 reasonableness of his action, considering the then-existing legal  
 5 standards. *Id.* Thus, to defeat Mr. Shumate's defense of qualified  
 6 immunity, Mr. Hinkley must show "first, that he suffered a deprivation  
 7 of a constitutional or statutory right; and second that such right was  
 8 clearly established at the time of the alleged misconduct." *Hamby v.*  
 9 *Hammond*, 821 F.3d 1085, 1090 (9th Cir. 2016).

10 "To be clearly established, a right must be sufficiently clear  
 11 that every reasonable official would have understood that *what he is*  
 12 *doing* violates that right." *Id.* at 1090-91 (quoting *Taylor v. Barkes*,  
 13 135 S. Ct. 2042, 2044 (2015)). A plaintiff need not find a case directly  
 14 on point, but the existing precedent must have placed the  
 15 unconstitutionality of an official's actions beyond debate when viewed  
 16 in the specific context of the case at hand. *Hamby*, 821 F.3d at 1090-  
 17 91. As such, Mr. Hinkley needed to prove the "precedent on the books"  
 18 at the time should have made clear to Mr. Shumate that his actions  
 19 violated the Constitution. See *id.*

20 Here, no legal precedent suggested – let alone clearly established  
 21 – that withholding a new or additional bed-mat would amount to a  
 22 constitutional violation. See, e.g., *Chappell*, 706 F.3d at 1061  
 23 (analyzing cases involving mattress deprivation and concluding there  
 24 was no clearly established law). Moreover, if Mr. Shumate had delved  
 25 into legal research and found the unreported case *Finley v. Neven* –  
 26 though not binding precedent – it would have still supported a

1 reasonable belief that his actions were lawful. See 388 F. App'x 694,  
 2 695 (9th Cir. 2010) ("[P]risoners do not have a clearly established  
 3 right to sleep on a comfortable mattress.").

4 Mr. Hinkley's medical issues are certainly relevant to the Court's  
 5 analysis. See *Hamby*, 821 F.3d at 1094–95 ("[O]ne can imagine a situation  
 6 where the officials' conduct is so egregious that no one would defend  
 7 it, even if there were no prior holdings directly on point."). But the  
 8 situation here was not so extreme. Medical repeatedly treated Mr.  
 9 Hinkley, yet no physician ever linked Mr. Hinkley's symptoms to his mat,  
 10 let alone indicate it might "result in significant injury or the  
 11 unnecessary and wanton infliction of pain." *Peralta*, 744 F.3d at 1081  
 12 (citations and quotation marks omitted). Given no medical opinion or  
 13 directive that the bed-mat was the cause of Mr. Hinkley's pain, Mr.  
 14 Shumate could have reasonably believed the mat affected comfort, but  
 15 did not create an "excessive risk" to Mr. Hinkley's health or safety.  
 16 See *Farmer*, 511 U.S. at 837.

17 Most people – especially given Mr. Hinkley's symptoms – would  
 18 prefer more padding between themselves and a concrete bed. Nonetheless,  
 19 even if one decides Mr. Shumate erred by ignoring or refusing Mr.  
 20 Hinkley's requests, this is far from finding Mr. Shumate should have  
 21 believed he was violating the Constitution. Cf. *Hamby*, 821 F.3d at 1095  
 22 (There is a "vast zone of conduct that is perhaps regrettable but is at  
 23 least arguably constitutional. So long as even that much can be said  
 24 for the officials, they are entitled to qualified immunity."). Thus,  
 25 the Court finds qualified immunity applies, and Mr. Shumate is not  
 26 liable for damages.

#### D. Injunctive Relief

2 "Qualified immunity is only an immunity from a suit for money  
3 damages, and does not provide immunity from a suit seeking declaratory  
4 or injunctive relief." *Hydrick v. Hunter*, 669 F.3d 937, 939-40 (9th Cir.  
5 2012). Injunctive relief is nonetheless inappropriate here, however,  
6 because Mr. Hinkley has moved to a different facility "and there is no  
7 evidence that he is likely to again be subject to the challenged  
8 conditions." *Brown v. Oregon Dep't of Corr.*, 751 F.3d 983, 990 (9th Cir.  
9 2014); see also *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)  
10 ("Absent a sufficient likelihood that he will again be wronged in a  
11 similar way, [a prisoner] is no more entitled to an injunction than any  
12 other citizen . . . .").

#### **IV. CONCLUSION**

Even assuming *arguendo* the Court could find Mr. Hinkley's bed-mat was so inadequate as to violate the Eighth Amendment, the law was not clearly established such that Mr. Shumate would have had fair notice of as much. Therefore, the Court finds summary judgment is appropriate; Defendant Shumate is protected by qualified immunity and Mr. Hinkley lacks standing to seek the requested injunctive relief.

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Accordingly, IT IS HEREBY ORDERED:

1. Defendant's Motion for Summary Judgment and Memorandum in Support, ECF No. 42, is GRANTED.

2. The Clerk's Office is directed to enter judgment in Defendant's favor.

3. All pending dates and deadlines are **STRICKEN**.

4. The file shall be **CLOSED**.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel and to Mr. Hinkley.

**DATED** this   8<sup>th</sup>   day of August 2016.

s/Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge